IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 539 OF 2003.

Gregory Rodrigues,
major, agriculturist,
businessman, resident of
Agacaim, Ilhas, Goa. ... Petitioner.

VERSUS

1. Village Panchayat of
Agacaim, through
Shri Xavier Marques,
its Sarpanch with
Office at Malwara,
Agacaim, Goa.

2. Shri Simon Dias,
Contractor, resident of
Baixo de Igreja,
Agacaim, Goa. ... Respondents.
(Respondent No.2 deleted
vide Order dated 5.12.2003).

Mrs. A.A. Agni with Ms. Ashwini Agni, Advocates for the Petitioner.

Mr. J.E. Coelho Pereira, Senior Advocate with Ms. B. Bhise, Advocate for the Respondent No.1.

CORAM: A.M. KHANWILKAR, J.

DATE: 5TH DECEMBER, 2003.

ORAL ORDER:

This petition under Article 227 of the Constitution of India, takes exception to the judgment and order dated September 19, 2003 passed by the Civil Judge, Senior Division, Panaji in Civil Suit No.115/96/C. The impugned decision is passed on the application preferred by the petitioner seeking leave of the Trial Court for production of additional documents purported to be under Order 7, Rule 14(3)

of C.P.C.

2. On perusal of the application, it appears that essentially only two reasons have been stated. Firstly that the document in question is extremely relevant to determine the controversy between the parties and secondly no prejudice will be caused to the defendants as they would have ample opportunity to cross-examine the maker of the document. The Trial Court has rejected the application and has found that the application is an attempt to overcome the lacuna or drawback in the evidence already on record and if any indulgence is shown to the plaintiff that will cause serious prejudice to the defendants. Besides, the Trial Court has observed that no just and sufficient cause has been shown by the petitioner to produce the said document on record. This decision is subject matter of challenge in the present Writ Petition.

3. Counsel for the petitioner submits that the document in question is essential for a full, complete and effectual adjudication of all the issues between the parties. Learned counsel further contends that as the petitioner has already explained in the evidence that the Surveyor was not traceable, for which reason the Court should have exercised its

discretion to meet the ends of justice. Learned counsel has placed reliance on the decision of the Apex Court reported in A.I.R. 1971 S.C., 1865 (Paragraph 15) in the case of **Sait Tarajee Khimchand and others v. Yelamarti Satyam and others.** The other decisions relied upon are reported in A.I.R. 1983 Bombay, 1 in the case of **Om Prakash Berlia and another v. Unit Trust of India and others,** 2001(2) Goa L.T., 307 (Paragraph 5) in the case of **Siridao Estate Pvt. Ltd. v. Smt. Rusai Marques** and A.I.R. 1980 Bombay, 387 (Paragraph 11) in the case of Ramnath Nandlal Dhool & Co. and another v. B.R. Shroti and others. Relying on the said decisions, learned counsel submits that it was expedient in the interest of justice to allow the application and rejection of the application would only result in non-suiting the petitioner, as the petitioner would be denuded from explaining the position on the basis of the document which was sought to be brought on record. Learned counsel further contends that the scope of interference in exercise of writ jurisdiction is very wide and this Court should lean in favour of doing substantial justice instead of upholding the hypertechnical view taken by the Trial Court. Reliance is placed on the decisions reported in (2002) 8 S.C.C., 400 in the case of **Essen Deinki v. Rajiv Kumar** and (2001) 8 S.C.C., 97 in the case

of **Estralia Rubber v. Dass Estate (P) Ltd.** with regard to the scope of interference in writ jurisdiction of Article 227.

4. On the other hand, counsel for the respondent contends that no indulgence be shown to the petitioner and more particularly when there is no infirmity either in the approach or the reasoning or the conclusion reached by the Trial Court. He submits that the Order passed by the Court below is essentially a discretionary order and as it is not possible to suggest that the discretion has wrongly been exercised or exercised in ignorance of law or is manifest error committed by the Trial Court, no interference in writ jurisdiction was warranted. Learned counsel for the respondent placed reliance on the decision of the Apex Court in (2002) 1 S.C.C., 535 (Paragraph 5) in the case of **Madanlal v. Shyamlal.**

5. Having perused the relevant documents and considered the rival submissions, it is seen that the petitioner had approached the Trial Court by way of application under Order 7, Rule 14(3) of C.P.C. for leave of the Court for production of additional documents. Indeed, only two reasons have been pressed into service, namely the document is

extremely relevant to determine the controversy between the parties and secondly no prejudice will be caused to the defendants as they would get an opportunity to cross-examine the maker of the document. Whereas, the Trial Court has found that if the document was allowed to be brought on record, that would result in undoing the drawback in the proceedings committed at the instance of the petitioner. In paragraphs 3 and 5 of the impugned judgment, the Trial Court has adverted to this aspect and has found that if such relief as prayed by the petitioner was to be granted, that would cause serious prejudice to the defendants. My attention was rightly drawn to the relevant portion of the cross-examination of P.W.1 in this behalf. Accordingly, if the petitioner's application was to be allowed, the effect of the cross-examination will be effaced which will cause prejudice to the defendants. In such a situation, the Court would be justified in refusing the leave for production of the document even if the document in question was extremely relevant to determine the controversy between the parties. Moreover, besides the aforesaid two reasons of relevancy of the document and no prejudice will be caused to the defendants, no other justification is given as to what prevented the petitioner to produce the said document on record

earlier, especially when the cross-examination was concluded in 1991. Whereas the present application is filed only in July, 2003. In other words, the view expressed by the Trial Court that no just and sufficient cause, much less, good cause has been made out by the petitioner so as to persuade the Court to grant leave for production of the disputed document, is not inappropriate. Insofar as the decisions relied upon by the counsel for the petitioner are concerned, the same will be of no avail to the fact situation of the present case. Indeed, when the document is relevant, so as to render full, complete and effectual adjudication of all the issues between the parties, the Court would exercise discretion, but as in the present case, the defendants having succeeded in extracting admission of the plaintiff's witness no.1 so as to discredit the plan already placed on record at Exh.PW.1/J and, the disputed document is only replica of the said plan which was already produced on record as P.W.1/J, if the discretion was to be exercised in favour of the petitioner, that would obviously cause prejudice to the respondents. In such a case, refusing to show any indulgence to the plaintiff, cannot be said to be inappropriate.

6. Accordingly, this Court, in exercise of writ jurisdiction ought to be slow to overturn the discretionary order of the Trial Court. Understood thus, none of the decisions relied upon by the petitioner will be of any avail, but as mentioned earlier, having regard to the fact situation of the present case, no interference is warranted at this stage in exercise of writ jurisdiction. Besides, the error committed by the Trial Court, if any, is capable of being corrected in appeal, if such a plea is raised by the petitioner. If that occasion arises in appeal, that be dealt with by the appellate Court in accordance with law, uninfluenced by this decision as this Court has declined to exercise writ jurisdiction at this interlocutory stage against the discretionary order passed by the Trial Court.

7. Hence dismissed.

A.M. KHANWILKAR, J.

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